

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

MISSOURI FEDERATION OF TEACHERS,)	
AFT, AFL-CIO,)	
)	
Petitioner,)	
)	
v.)	Public Case No. R 91-010
)	
GRANDVIEW C-4 SCHOOL DISTRICT,)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the filing by the Missouri Federation of Teachers (Federation) of a petition for certification as public employee representative of certain employees of the Grandview School District. Hearing in the matter was held on April 4, 1991 in Jefferson City, Missouri and on April 15 and May 28, 1991 in Kansas City, Missouri, at which representatives of the Federation and the District were present. This case was heard by State Board of Mediation Chairman Mary L. Gant, employee member, David L. Langston, and employer member, Pamela S. Wright. Langston subsequently resigned from the Board, whereupon the case was submitted by transcript to new employee member, Joel Rosenblit. At the hearing, the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law.

FINDINGS OF FACT

The Grandview School District's employees are divided into two distinct groupings: the certified employees who are the teachers and administrative personnel, and the classified employees who include the clericals, instructional paraprofessionals

(a/k/a aides), bus drivers, custodial, maintenance, and other support staff. At issue here are two groups of these classified employees: the clericals and the aides. When reference is made hereinafter to classified employees, it is limited for purposes of this decision to just these two employee groups.

Most of the District's administrative personnel work at the central office, including the Superintendent (Tony Stansberry), three Assistant Superintendents (Doug Miller -- Human Resources, James Bliss -- Business and Budget, and Jerry Thornsberry -- Curriculum and Instruction) and the Director of Special Education (Sharon Retschlag). Also working at the central office are ten classified employees: five secretaries, two bookkeepers, one purchasing clerk, one accounting clerk, and one receptionist. Each of these classified employees is directly supervised by one of the central office administrators. Miller also supervises a clerical employee who works in her home. All of the aforementioned are included in the Union's proposed unit except for the administrators and Stansberry's and Miller's personal secretaries.

The District's Instructional Service Center (ISC) is located approximately one block from the central office. Three administrators work at this facility (Terry Krueger -- Language Arts Coordinator, Janice Roth -- Computer Science/Math Coordinator and Beth Brown -- Developmental Learning Assistance Coordinator). Two clerical employees and one secretary also work at this facility and are included in the Union's proposed unit. Krueger and Brown each directly supervise a clerical employee and Roth shares supervision of the secretary with Thornsberry.

The District's Transportation and Maintenance facility is a few blocks from the central office. The Director of Transportation and Maintenance (Larry Smith) works there as do two program specialists (one for transportation and one for maintenance) and three bus paraprofessionals. Smith supervises these employees. The program specialists are included in the Union's proposed unit.

The District has one senior high school, two junior high schools, and six elementary schools. Thornsberry supervises the principals at the high school and junior high schools, while Miller supervises the principals at the elementary schools. Each principal, in turn, supervises the employees who work at their school, including the classified employees.

The classified employees at the high school are three secretaries, two secretary/receptionists, one office aide/secretary to the Athletic Director, two cashier/lunchroom supervisors, one healthroom paraprofessional, one clerical paraprofessional, and one instructional paraprofessional. The secretaries, the secretary/ receptionists, and the office aide/secretary to the Athletic Director are included in the Union's proposed unit.

The classified employees at each of the junior high schools are two secretaries, one attendance clerk, one healthroom paraprofessional, one cafeteria/office clerk and at least one special education paraprofessional. The secretaries, attendance clerk, and cafeteria/office clerk are included in the Union's proposed unit.

Each elementary school has one secretary, one cashier/lunchroom supervisor, one attendance clerk/healthroom paraprofessional, one language arts paraprofessional, and two developmental learning assistance program (DLAP) paraprofessionals. Five of the elementary schools have at least one special education paraprofessional and one elementary school has a parents as educator partners paraprofessional. Two large elementary schools, Conn-West and Butcher-Greene, also have an extra office paraprofessional in the school office. The only employees in the elementary schools in the Union's proposed unit are the secretary to the principal of each school and the two office aides.

Most of the job titles or classifications among the District's classified employees were recently changed as a result of an outside consulting group's study and recommendations regarding restructuring the District's organizational structure. This

has come to be known as the Lee & Burgess study. This study resulted in a host of new job titles. For example, the two clericals in the Transportation & Maintenance Department were previously classified as "Class II clericals", but are now called "program specialists", the former "office aides" are now called "office paraprofessionals" and the former "bus aides" are now called "driver paraprofessionals". With very limited exceptions, these new job titles do not carry with them any job changes as to duties and skills in the particular jobs themselves.

The approximately 40 employees in the Union's proposed office/clerical bargaining unit mainly perform office duties for the District's administrative personnel. Prior to the Lee & Burgess study, almost all of the employees in the Union's proposed unit were classified as Class I through IV clericals. All these employees work full time (except for the five employees added to the proposed unit at the hearing) and receive a variety of fringe benefits. The employees which the District seeks to include in the unit are those proposed by the Union and the approximately 60 paraprofessionals (a/k/a the aides). The aides perform a variety of logistical teaching and instructional support functions. Some perform clerical type work for instructional support functions. Some perform clerical type work for instructional members of the staff, typically a teacher in one of the schools. Most of the various instructional aides work part-time. The majority of the instructional aides do not work a threshold of 30 hours per week which is required to be eligible to receive fringe benefits.

Dee Ladd is the personal secretary to Bliss, the Assistant Superintendent of Business and Budget. Bliss is responsible for the revenue and expenditure forecasts to determine the amount of funds available for compensation of all personnel. Additionally, Bliss is a member (along with five teachers, a building principal, Miller and two Board of Education members) of the community known as the Grandview 10. This committee makes salary recommendations to the Board of Education for the District's certified employees and benefits for both classified and certified employees. Bliss also

participates in meetings with Miller wherein wages and benefits for the classified employees are discussed. Ladd types all correspondence generated by Bliss and also types all materials he prepares for Grandview 10 meetings and similar meetings with Miller. The documents typed by Ladd include reports and schedules relating to the District's budget and alternative wage and benefit recommendations.

Peggy Hess is the lead receptionist for the District. She reports to the Superintendent and her work station adjoins his office. Her primary responsibility is to transmit and assist communications throughout the school district. The District's facsimile machine is located at Hess' workstation. She monitors communications received and transmitted by facsimile.

Vicky McGraw works at the central office and is the personal secretary for Assistant Superintendent Thornsberry. She types all his correspondence, including performance evaluations which he prepares for certified employees and principals. Thornsberry presides over monthly meetings with the building principals. Personnel matters relating to staffing are discussed at these meetings. McGraw attends these monthly meetings and takes the minutes, types them and distributes them to the building principals.

Cleo Unterreiner is a secretary at the ISC facility. She is supervised for five hours of her work day by Janice Roth, the District Computer Science/Math Coordinator. During the remaining three hours of her work day, she is supervised by Thornsberry. In her capacity as Roth's secretary, she types all her correspondence. In her capacity as Thornsberry's secretary, she types all his correspondence, including the performance evaluations he prepares for employees.

Gayle Spears works at the District's central office as the secretary to Retschlag, the Director of Special Education. In this capacity, she types all documents generated by Retschlag, including the performance evaluations she prepares for employees.

Carolyn Simmons works as a Program Specialist -- Transportation at the District's transportation facility. Her responsibilities include typing state reports, purchase orders, and her supervisor's correspondence (Larry Smith). She debits purchase orders into the computer against the budget and provides a budget status report to Smith each month.

Each of the nine school principals supervises a personal secretary who works at his or her school. Each secretary is responsible for typing all documents prepared or generated by the principal, including evaluations and disciplinary notices. One principal serves as a member of the Grandview 10 committee. The secretary whose principal serves on that committee types whatever documents are generated by the principal for the committee.

CONCLUSIONS OF LAW

There are two issues to be decided in this case: 1) the composition of the bargaining unit; and 2) the confidential status of certain employees. Each of these issues will be addressed below.

Discussion Concerning Appropriate Unit

The Union has petitioned for an election in what it characterizes as an "office-clerical" unit. The Union's proposed bargaining unit would include all District secretaries, clerks, bookkeepers, accounts payable clerks, library clerks, and clericals I, II, III, and IV, totaling 40 employees. The District opposes this unit on the grounds it is too narrowly drawn. It contends that the only appropriate unit is one that includes not only the employees in the Union's proposed unit, but also all paraprofessional employees (i.e. aides) and cashier/lunchroom supervisors. This proposed unit totals 100, 15 of which the District contends are confidential. If those employees are excluded, then there would be about 85 employees in the District's proposed unit.

This Board is charged with deciding issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo 1986 wherein it provides: "Issues with respect to appropriateness of bargaining units and majority representative status shall be resolved by the State Board of Mediation." An appropriate bargaining unit is defined in Section 105.500 (1) RSMo 1986 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

Missouri statutory law does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest", nor does it set out any criteria as to the means to be used by the Board in resolving such issues. However, the Board has consistently looked to a number of factors in determining whether employees have a community of interest. Those factors, as set forth in AFSCME, Missouri State Council 72 v. Department of Corrections and Human Services, Case No. 83-002 (SBM 1984), and other cases, are:

1. Similarity in scale or manner of determining earnings;
2. Similarity in employment benefits, hours of work, and other terms and conditions of employment;
3. Similarity in the kind of work performed;
4. Similarity in the qualifications, skills, and training of employees;
5. Frequency of contact or interchange among the employees;
6. Geographic proximity;
7. Continuity or integration of production processes;
8. Common supervision and determination of labor-relations policy;
9. Relationship to the administrative organization of the employer;
10. History of collective bargaining; and

11. Extent of union organization.

Generally, no one factor in and of itself is determinative in making this call. Instead, all are weighed together. Additionally, in making unit composition decisions this Board attempts to guard against over-fragmentation of the bargaining units. Department of Elementary and Secondary Education, Division of Vocational Rehabilitation, Case No. R 89-017 (SBM 1989).

Before applying the above-stated factors to the facts of this case, certain preliminary matters raised by the parties must be addressed.

First of all, although both parties characterize their proposed unit as "presumptively appropriate", we have made no such presumption herein. As a practical matter, were we to have adopted such a presumption, that certainly would have resolved the bargaining unit question. However, the party with the unit not chosen "presumptively appropriate" would not have a clue as to how the Board reached its decision. From that perspective, such an outcome is unacceptable. We therefore decline to characterize either proposed unit as "presumptively appropriate".

Second, contrary to the District's implicit suggestion, this Board is not required to decide which proposed unit is "the" appropriate unit or "the most" appropriate unit. Instead, our duty in all election cases is to decide whether a proposed unit is "an" appropriate unit. City of Poplar Bluff, Case No. UC 90-030 (SBM 1990) and Curators of the University of Missouri, d/b/a KOMU-TV, Case No. R 86-013 (SBM 1986). The distinction is obviously important because it means that the Petitioner does not have to request an election in the most appropriate unit that could be envisioned, either by the parties themselves or this Board.

Finally, we have decided to comment on the fact that both parties cited NLRB cases as authority for their respective positions herein. While we have looked in the past, and will continue to look in the future, to NLRB cases where the issues being

addressed are of first impression for this Board, that is not the case here. This Board has decades of experience making unit determination decisions. That being so, it is unnecessary for us to rely on NLRB cases in reaching the instant decision.

Having so found, attention is now turned to the application of the above-stated factors to this case. After applying same, we find that the Union's requested unit qualifies as an appropriate unit. Our rationale follows. To begin with, we view the Union's requested unit as essentially a clerical unit because prior to the Lee & Burgess study, almost all the employees in the requested unit were classified as Clericals I-IV. Although some of their job titles were changed as a result of the study, their actual job duties did not. As a result, all the employees in the Union's proposed unit perform work that can be characterized as office clerical work. Specifically, they all perform clerical work functions for the District's administrative personnel in an office or school setting. Next, since they all perform similar work duties, this creates a significant degree of homogeneity among the proposed group. While they all work at different geographic locations, such as the central office, ISC or at the various schools, they often have contact with one another. As an example, central office bookkeeper Beth Boerger has daily telephone contact with other central office employees, school building secretaries, and the ISC clericals. Additionally, all are full-time employees (except for five employees added to the proposed unit at the hearing) who receive fringe benefits. Third, in our opinion, a unit of clericals in a District of the size involved here is workable in terms of sheer numbers. On its face, a group of 40 employees is not so small in number that it warrants being combined with another employee group or included in an overall wall to wall unit. An example of that was Ste. Genevieve School District, Case No. 80-036 (SBM 1982), where we included the clericals and the aides in a wall to wall unit because there were only four and two of each respectively eligible for inclusion. Instead, we are persuaded that a group of 40 employees is large enough, under the circumstances present here, to warrant their own unit. In so finding, we note that

clerical units were also found appropriate in St. Louis Board of Education, Case No. 79-055 (SBM 1980) and Department of Corrections, State of Missouri, Case No. 81-028 (SBM 1982). Finally, were we to hold otherwise and combine the clericals with the 60 aides as proposed by the District, it is conceivable that the interests of the minority clericals could be subverted by the majority aides.

In so finding, we are well aware of the interchange and overlap between the District's clerical employees and the paraprofessionals (i.e. aides). For example, there is similarity in the amount of wages paid to both employee groups and they share common supervision. Additionally, some of the aides spend a portion of their time in the building office with the clerical employee doing clerical type work. However, clerical work is not the aide's main work duty while it is for the clericals. The instructional aides working in the schools (DLAP, language arts and special education) perform most of their work in either special classrooms or in the teacher's classrooms where in many cases they work directly with students. Clericals do not work in the classrooms at all. Furthermore, when the aides perform clerical type duties, it is often in support of one of the instructional members of the staff such as a teacher while the clericals perform this work for the District's administrative personnel. Aside from these variations in job duties though, there is also a difference in the job status of the two employee groups: as previously noted, most of the clericals are full-time employees and qualify for fringe benefits while most of the aides are part-time employees and do not qualify for fringe benefits. In our view, although these distinctions between the clericals and the paraprofessionals (i.e. aides) are not monumental, they are nevertheless sufficient to warrant the creation of a separate unit for the clericals.

Discussion Concerning Confidential Status

Although confidential employees are not specifically excluded from the coverage of the Missouri Public Sector Labor Law, case law from this Board and the courts have carved out such an exclusion. See Parkway School District v. Parkway Association of

Education Support Personnel, Local 902/MNEA, 807 S.W.2d 63 (Mo 1991); MNEA v. Missouri State Board of Mediation, 695 S.W.2d 894 (Mo 1985); Parkway School District, Case No. 88-025 (SBM 1989); and Belton School District, Case No. 81-015 (SBM 1982). This exclusion means that confidential employees cannot be included in the bargaining unit. Since the District contends that 15 employees are confidential, it is necessary for us to determine if such is, in fact, the case.

Before doing so, it is necessary to decide what legal standard will be used to make this call. Our analysis starts with a review of the historical context. Beginning with several 1976 cases,¹ this Board applied the so-called "labor-nexus" test initially devised by the NLRB. Under the labor-nexus test, those employees who act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations are excluded from the bargaining unit. Said another way, an employee will be excluded from the bargaining unit if they have access to advance information about management's strategy and tactics in labor matters which might be used to the detriment of management. In 1982 in Belton School District, Supra, the Board adopted a different legal standard for determining confidential status, namely the so-called "confidentiality" test. Under this legal standard, all employees having a confidential relationship to management were excluded from the bargaining unit without regard to labor nexus. The Missouri Supreme Court upheld this change of policy in 1985 in MNEA v. Missouri State Board of Mediation, Supra. In that decision, the Court recognized that the Board has broad discretion in implementing statutory policy and held that the Board was free to modify or discard announced guidelines. In 1989 in Parkway School District, Supra, the Board departed from the confidentiality test and announced a

¹ City of Monett, Case No's. 106 and 107 (SBM 1976) and City of Arnold, Case No. 75-120 (SBM 1976)

return to the labor-nexus test for determining confidential status. The Missouri Supreme Court recently upheld this change of policy in Parkway School District v. Local 902, MNEA, Supra.

It is against this historical backdrop that the District invites us to abandon the labor-nexus test and return to the confidentiality test. We expressly decline to do so. This Board has no interest whatsoever in returning to the confidentiality test we used in Belton. Moreover, were we to do so, this would probably precipitate a third trip to the Supreme Court on this issue. Therefore, we take this opportunity to announce our intention to continue to apply the labor-nexus test to determine confidential status.

Applying that legal standard here, we conclude that only one of the 15 employees in question, namely Dee Ladd, meets this confidential test. Our analysis follows.

The only District administrator other than Miller who is involved in the meet and confer process with the teachers is Bliss, the Assistant Superintendent of Budget and Business. Bliss also participates in meetings with Miller in which teacher wages and benefits are discussed. None of the other District administrators participate in any meaningful way in the formulation, determination, and effectuation of District labor relations policies. They are involved in supervising and coordinating curriculum and instructional policies on behalf of the District, not labor relation policies. While the school principals supervise and evaluate the employees in their schools, they do not make bargaining strategies or recommendations for the District.

Having found that only Miller and Bliss are primarily responsible for effectuating the District's labor relations policies, attention is turned to their secretaries to determine if they meet the labor nexus test. Only Bliss' secretary is in issue here because Miller's secretary was excluded by the parties stipulation.

Bliss' secretary, Dee Ladd, types and copies all materials that he prepares for his meetings in the meet and confer process with the so-called Grandview 10 and his

meetings with Miller concerning teacher wages. The documents typed by Ladd include narrative reports and schedules relating to the District's budget and alternative wage and benefit recommendations. Since Ladd is privy to precise labor costs and rate figures utilized in future meet and confer sessions, we find she qualifies as a confidential employee under the labor-nexus test. Therefore, she is excluded from the bargaining unit on that basis.

Having held that the other District administrators and principals do not participate directly in labor relations policy decisions, it follows from that holding that none of the other 14 employees claimed as confidential by the District qualify for that status under the labor-nexus test. While many of these secretaries type employee evaluations, disciplinary notices, and other sensitive materials, that is not sufficient to make them confidential employees. There is no evidence that any of the secretaries, other than Ladd, type or have access to any matters in advance concerning the District's labor relations policies. That being so, only Ladd is excluded from the unit as confidential.

DECISION

It is the decision of the State Board of Mediation that an appropriate bargaining unit is as follows: all secretaries, clerks, bookkeepers, accounts payable clerks, library clerks, office aides, and clericals I-IV in the Grandview School District, but excluding the Superintendent's secretary, the secretary to the Assistant Superintendent for Human Resources, the secretary to the Assistant Superintendent for Business and Budget, and all other employees.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or her designated representative, among the employees in the unit found appropriate. This election shall be conducted as early as possible, but not later than thirty (30) days from the date below. The exact time and place will be set forth in

the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to be represented for the purposes of exclusive recognition by the Missouri Federation of Teachers.

It is hereby ordered that the School District shall submit to the Chairman of the State Board of Mediation, as well as to the Federation, within fourteen (14) days from the date of this decision, an alphabetical list of names and addresses of employees in the unit determined above to be appropriate who were employed during the payroll period immediately preceding the date of this decision.

Signed this 20th day of September, 1991.

STATE BOARD OF MEDIATION

(S E A L)

/s/ Mary L. Gant
Mary L. Gant, Chairman

/s/ Joel Rosenblit
Joel Rosenblit, Employee Member

PARTIAL DISSENT /s/ Pamela S. Wright
Pamela S. Wright, Employer Member

PAMELA S. WRIGHT, CONCURRING AND DISSENTING.

I concur in the Board's decision regarding the confidential status of certain employees, but I dissent from the Board's holding regarding the composition of the bargaining unit.

CONFIDENTIAL EMPLOYEES

In Parkway School District v. Local 902/MNEA, 807 S.W.2d 63, 67 (Mo. en banc 1991), the Missouri Supreme Court upheld the Board's decision to abandon the Belton test and return to the "labor-nexus" standard. More generally, the Court recognized the Board's authority to formulate its own standard for determining which employees are confidential and therefore excluded from the bargaining unit. Id.

The District argues that the Board should exercise its discretion and re-adopt the Belton test. While recognizing the doctrine of stare decisis is not applicable to administrative tribunals,² I think the Board should be consistent in its standards so that the parties appearing before it know what to expect. Thus, I concur with the majority's holding to reject a return to the Belton standard.

COMPOSITION OF BARGAINING UNIT

In the majority opinion, the Board holds that the Union's "office-clerical" unit is an appropriate bargaining unit ("the Board unit"). I believe that the Board's decision could result in over-fragmentation in that the unit should include other classified employees who have clerical functions. More specifically, I would include: cashier/lunch room supervisors and attendance clerk/health room paraprofessional ("the Wright group").³

² City of Columbia v. Missouri State Board of Mediation, 605 S.W.2d 192, 195 (Mo.App. 1980).

³ I concur with the Board's holding to exclude the special educational paraprofessionals, DLAP paraprofessionals, and language arts paraprofessionals.

I believe the Wright group has a substantial community of interest in wages, hours, and fringe benefits to those included in the Board unit. They are all paid on an hourly basis. They record their working hours on a daily basis on a time sheet. They are all paid on a monthly basis. They receive a one-half hour unpaid lunch break. They are subject to a standard pay grade and salary schedule. There is overlap in the hourly wage paid to the employees in the Board unit and the Wright group. Almost all the employees are on nine month contracts.

Similarities also exist in the areas of qualifications, and skills and evaluations. They are all required to have a high school education. They must all have the ability to use a typewriter or computer. They all complete the same job application form. The District uses the same forms to evaluate their job performance.

There is also a substantial amount of contact and the sharing of duties between the Board unit and the Wright group. For example, at the two large elementary schools, the cashier/lunchroom supervisor works in the school office approximately five hours per week, the attendance clerk/healthroom paraprofessional answers the office telephone and in turn, the principal's secretary assists the attendance clerk/healthroom paraprofessional by entering attendance records into the computer and taking the temperature of a sick child. The principal's secretary also sells lunch tickets which is the responsibility of the cashier/lunchroom supervisor. There is even more interface at the four small elementary schools. Similar interchange occurs at the high school and junior high schools.

While these employees have some clerical duties, their work is primarily performed in a classroom setting to assist teachers and students. Similarly, I would exclude the bus paraprofessionals whose principal duties are to accompany students with disabilities as they are transported to and from schools.

The Wright group primarily performs clerical duties. The cashier/lunchroom supervisors collect money, process lunch tickets, prepare deposit tickets and keep records to meet the federal lunch program. The attendance clerk/healthroom paraprofessionals computerize attendance records and generate regular reports of same. They also maintain immunization records.

In sum, I conclude that the classified employees in the Wright group share a significant community of interest with the Board unit. I believe the Board has erred in not including the attendance clerk/healthroom paraprofessionals and the cashier/lunchroom supervisors in the bargaining unit.

Dated this 20th day of September, 1991.

/s/ Pamela S. Wright
Pamela S. Wright, Employer Member